

PUBLIC LAW BOARD NO. 2960

AWARD NO. 135
CASE NO. 197

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed to assigned Foreman J. Obergon the Tie Gang Foreman position on Bulletin 326 and instead assigned junior Foreman Rose. [Organization File 2SW-1076; Carrier File 81-86-7]

(2) Claimant should now be assigned the Foreman's position advertised on Bulletin 326 and compensated for the differential in wages between his current position and that of the Class A Tie Gang Foreman's position."

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The claim before the Board is essentially an attempt to overturn awards which, three previous times, set forth that in making appointments to Class A foreman positions seniority is

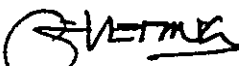
a controlling consideration only when qualifications are relatively equal.

We are firm in our interpretation of the pertinent contract language and do not intend to waiver from it. It should be well established that qualifications are of first consideration and seniority is secondary in Class A foreman appointments. Thus, the relevant question in such cases is not an interpretive one but a factual one. That question is whether Management has made a prima facie case justifying their conclusion that the junior employee's skill is more than relatively equal to any senior employee who also bid for the job. When they have shown that there is an appreciable and superior difference between employees, then Management is within their discretion to make seniority a secondary consideration and choose the junior employee.

In this case, the Organization never asserted that the Claimant's qualifications were equal to the junior employee. Weighing this against the evidence offered by Management, there is no basis to conclude that the Claimant was relatively equal to the junior employee.

AWARD:

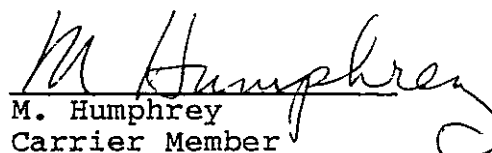
The claim is denied.



Gil Vernon, Chairman



D. D. Bartholomay
Employee Member



M. Humphrey
Carrier Member

Dated: 5/9/89